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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,996	11/03/2003	Jacqueline Burrows	C4252(C)	5365

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/699,996

Applicant(s)

BURROWS ET AL.

Examiner

Brian P. Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/3/04 & 2/2/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. The examiner makes of record that instant claims 1, 4-6, 12-14, 16-20, 22-25, 29 and 33 recite a broad range of components followed by a series of narrow ranges (i.e. with the terms “preferably”, “more preferably”, “most preferably”, and “typically”). For examination purposes, the examiner asserts that the narrow ranges recited in instant claims 1, 4-6, 12-14, 16-20, 22-25, 29 and 33 are merely exemplary ranges, and thus, the prior art will be applied against the broadest ranges recited in instant claims 1, 4-6, 12-14, 16-20, 22-25, 29. Furthermore, the examiner suggests that applicant should delete the narrow ranges from instant claims 1, 4-6, 12-14, 16-20, 22-25, 29, and add new dependent claims that recite the narrow ranges recited in instant claims 1, 4-6, 12-14, 16-20, 22-25, 29.
3. The examiner construes the phrase “essentially free of detergency builder” to mean a composition that contains less than 5% by weight of a detergency builder, as defined on page 11, lines 14-16 of the instant specification.

### ***Claim Rejections - 35 USC § 112***

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 27 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, for containing the phrase "which is essentially free of aluminosilicate." The phrase "essentially free of aluminosilicate" renders the claim vague and indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the term "essentially free". Furthermore, the specification does not contain guidelines describing what numerical values are encompassed by the phrase "essentially free of aluminosilicate". Appropriate correction and/or clarification is required.

7. Claim 33 provides for the use of a nonionic surfactant, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 33 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

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35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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9. Claims 1-15, 23-30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Masaki, JP 01066298.

Masaki, JP 01066298, discloses a detergent composition comprising 10-40% by weight of an anionic surfactant, such as an alkylbenzene sulphonate, 0.5-10% by weight of a nonionic surfactant having an HLB of greater than 15 and containing 50-300 moles of alkylene oxide, and adjunct ingredients (see abstract), as required by applicant in the instant invention. Therefore, instant claims 1-15, 23-30 and 33 are anticipated by Masaki, JP 01066298.

10. Claims 1-15, 23-30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kao Corp, JP 63061093.

Kao Corp, JP 63061093, discloses a detergent composition comprising 10-40% by weight of an anionic surfactant, such as an alkylbenzene sulphonate, 0.1-10% by weight of a nonionic surfactant having an HLB of greater than 18, and adjunct ingredients (see abstract), as required by applicant in the instant invention. Therefore, instant claims 1-15, 23-30 and 33 are anticipated by Kao Corp, JP 63061093.

11. Claims 1-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Blything et al, U.S. Patent No. 6,720,298.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

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either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Blything et al, U.S. Patent No. 6,720,298, discloses a built laundry detergent composition comprising 5-40% by weight of a surfactant system comprising 60-99% by weight of an anionic sulphonate surfactant and 1-40% by weight of an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50 (see abstract and col. 2, lines 14-55). It is further taught by Blything et al that the composition also contains 10-80% by weight of a detergent builder, such as sodium carbonate, sodium sulphate, sodium silicate, and burkeite (see col. 4, lines 1-47), and that the composition is in the form of a powder (see col. 5, lines 53-65), per the requirements of the instant invention. Specifically, note Examples 5-6. Therefore, instant claims 1-33 are anticipated by Blything et al, U.S. Patent No. 6,720,298.

12. Claims 1-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Singh et al, U.S. Patent No. 6,689,735.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

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the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Singh et al, U.S. Patent No. 6,689,735, discloses a built laundry detergent composition comprising 5-40% by weight of a surfactant system comprising an anionic sulphonate surfactant and an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50 (see abstract and col. 2, lines 9-45). It is further taught by Singh et al that the composition also contains 10-80% by weight of a detergent builder, such as sodium carbonate, sodium sulphate, sodium silicate, and burkeite (see col. 5, line 55-col. 6, line 35), and that the composition is in the form of a powder (see col. 7, lines 39-51), per the requirements of the instant invention. Specifically, note Examples 1-14. Therefore, instant claims 1-33 are anticipated by Singh et al, U.S. Patent No. 6,689,735.

13. Claims 1-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Singh et al, U.S. Patent No. 6,759,380.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.



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Singh et al, U.S. Patent No. 6,759,380, discloses a built laundry detergent composition comprising 5-40% by weight of a surfactant system comprising an anionic sulphonate surfactant and an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50 (see abstract and col. 2, lines 13-48). It is further taught by Singh et al that the composition also contains 10-80% by weight of a detergent builder, such as sodium carbonate, sodium sulphate, sodium silicate, and burkeite (see col. 6, lines 8-57), and that the composition is in the form of a powder (see col. 7, line 63-col. 8, line 16), per the requirements of the instant invention. Specifically, note Examples 1-14. Therefore, instant claims 1-33 are anticipated by Singh et al, U.S. Patent No. 6,759,380.

### ***Double Patenting***

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No.

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6,720,298. Although the conflicting claims are not identical, they are not patentably distinct from each other because Blything et al, U.S. Patent No. 6,720,298, claims a similar built powder laundry detergent composition for washing laundry comprising 5-40% by weight of a surfactant system comprising 60-99% by weight of an anionic sulphonate surfactant and 1-40% by weight of an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50, a detergent builder, such as sodium carbonate, sodium sulphate, sodium silicate, and burkeite, and optional ingredients (see claims 1-10 of Blything et al, U.S. Patent No. 6,720,298), per the requirements of the instant claims. Although Blything et al, U.S. Patent No. 6,720,298, claims a similar powder laundry composition, they are not identical, because the instant claims optionally contain a cationic surfactant that is not claimed in Blything et al, U.S. Patent No. 6,720,298. Therefore, claims 1-33 of the instant invention are an obvious formulation in view of claims 1-10 of Blything et al, U.S. Patent No. 6,720,298.

16. Claims 1-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No.

6,689,735. Although the conflicting claims are not identical, they are not patentably distinct from each other because Singh et al, U.S. Patent No. 6,689,735, claims a similar built powder laundry detergent composition for washing laundry comprising 5-40% by weight of a surfactant system comprising an anionic sulphonate surfactant and an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein

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R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50, 10-80% a detergent builder, and a cationic surfactant (see claims 1-9 of Singh et al, U.S. Patent No. 6,689,735), per the requirements of the instant claims. Although Singh et al, U.S. Patent No. 6,689,735, claims a similar powder laundry composition, they are not identical, because the instant claims optionally contain a polycarboxylate polymer that is not claimed in Singh et al, U.S. Patent No. 6,689,735. Therefore, claims 1-33 of the instant invention are an obvious formulation in view of claims 1-9 of Singh et al, U.S. Patent No. 6,689,735.

17. Claims 1-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,759,380. Although the conflicting claims are not identical, they are not patentably distinct from each other because Singh et al, U.S. Patent No. 6,759,380, claims a similar built powder laundry detergent composition for washing laundry comprising 5-40% by weight of a surfactant system comprising an anionic sulphonate surfactant and an ethoxylated alcohol nonionic surfactant of the formula  $R-(O-CH_2-CH_2)_n-OH$ , wherein R is a hydrocarbon of 8-16 carbon atoms and n is from 20-50, 10-80% a detergent builder, and a cationic surfactant (see claims 1-20 of Singh et al, U.S. Patent No. 6,759,380), per the requirements of the instant claims. Although Singh et al, U.S. Patent No. 6,759,380, claims a similar powder laundry composition, they are not identical, because the instant claims optionally contain a polycarboxylate polymer that is not claimed in Singh et al, U.S. Patent No. 6,759,380. Therefore, claims 1-33 of the

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instant invention are an obvious formulation in view of claims 1-20 of Singh et al, U.S.

Patent No. 6,759,380.

18. The examiner notes that the references cited in the International Search Report as "X" references are cumulative to the art rejections of record, and thus, have not been applied in this Office action in accordance with **MPEP 706.02**.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

BPM

Brian Mruk  
June 16, 2005

*Brian P. Mruk*

Brian P. Mruk  
Primary Examiner  
Tech Center 1700